

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.2058 of 2014 (O&M)
Date of Decision: 15.07.2015.

Ram Raj Gupta

.....Appellant.

Versus

M/s Rachitech Engg. Pvt. Ltd. and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE S.S. SARON.
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. A.P.Bhandari, Advocate for the appellant.
Mr. Tapan Kumar Yadav, Advocate for respondent No.1.
None for respondents No.2 and 3.

S.S. Saron, J.

This appeal has been filed by the appellant-workman Ram Raj Gupta against the judgment and order dated 16.09.2014 passed by the learned Single Judge in CWP No.5640 of 2011 whereby the petition filed by him seeking quashing of the order dated 13.05.2010 (Annexure P6) passed by the learned Labour Court-II, Faridabad (respondent No.3) had been dismissed.

The appellant states that he was employed by M/s Rachitech Engg. Pvt. Ltd. ('Management' - for short) (respondent No.1) as a Welder with effect from 01.04.1990. Thereafter, he was put to work under a Contractor, namely, M/s New Jyoti Fabricator, through its Proprietor Shri Kundan Lal Soni, ('Contractor' - for short) (respondent No.2). The appellant claimed that he was getting last pay wages of Rs.1,605/- per month when his services were terminated. He filed a petition dated 04.08.2004 (Annexure P1) under Section 33 C (2) of the Industrial Disputes Act, 1947 ('I.D. Act' - for short) seeking computation of wages. The appellant submitted that his salary from July 1992 to December 1992 was not paid despite several

requests either by the Management (respondent No.1) or by the Contractor (respondent No.2). It is stated that he had worked for full days of each month from July 1992 to December 1992 and his total amount of salary came to Rs.9,630/-. The appellant claimed that he was entitled to the said salary of Rs.9,630/- @ Rs.1,605/- per month; one month salary of Rs.1,605/-; four years' service compensation i.e. two months salary Rs.3,210/-; unpaid salary for the month of March 1994 and 24 days of April 1994 Rs.2,805/-; 30 days' wages of un-availed leave Rs.1,605/- and bonus for the year 1993-94 @20% as paid by the respondent to their employees i.e. Rs.4,000/-. In this manner, he made a claim of Rs.22,855/-.

The Management (respondent No.1) filed its reply dated 04.02.2005 (Annexure P2). It was submitted that any claim against it was barred by the principle of *res judicata* and it was not liable to be made a party. Besides, from the application (Annexure P1), it was submitted that it was not clear against which of the parties, the claimant was making an application for computation of the amount as there were three/four respondents i.e. Rajinder Nawasa, Managing Director of the first respondent M/s Rachitech Engg. Pvt. Ltd.; Shri Kundan Lal Soni, second respondent; Workman of M/s Rachitech Engg. Pvt. Ltd., the third respondent and M/s New Jyoti Fabricators, the fourth respondent. As such, the application suffered from mis-joinder of parties and was liable to be dismissed. It was submitted that the claimant (now appellant) was abusing and misusing the process of law with a view to specifically harass the Management (respondent No.1) so as to extract money. All the litigations had been undertaken by the workman (appellant) with the

view that its management would suffer. Even if nothing came out in his favour, the management would suffer harassment.

The claimant (appellant), it is submitted, had not disclosed under which of the contractor he had worked from July 1992 to December 1992 and who had not paid the wages. He had impleaded two contractors. A person claiming himself to be General Secretary of the Engineering Majdoor Union made a complaint to the Labour Inspector but no complaint regarding wages was made before him. The appellant also made an application on 15.02.1993 under Section 15 of the Payment of Wages Act in which he claimed wages which was rejected. A third application No.201 of 1993 was made under Section 33 C (2) of the I.D. Act which was also rejected (Annexure P5). Then he raised an industrial dispute for his reinstatement against the Management (respondent No.1) and he did not implead any contractor in that claim although he was aware of the contractors. He did not implead them because the Management (respondent No.1) in its reply to the application under Section 33 C (2) of the I.D. Act had made it clear that he was an employee of the contractors whose names were disclosed. The said dispute was decided against the appellant and it was clearly held that he was an employee of the Contractor (respondent No.2) and not of the Management (respondent No.1).

The claim, even otherwise, it was submitted, was highly belated being twelve years old and was time barred. Besides, the workman (appellant) while allegedly working under the contractors from July 1992 to December 1992 did not make any complaint to the Management (respondent No.1) that he was not paid wages. Had he

made a complaint, the company would have deducted the amount from the contractors' bill. At that time, none of the contractors were working with them and their contracts were terminated in the year 1993. It was not possible for the Management (respondent No.1) to realize the amount from the contractors. The Management (respondent No.1) would have to resort to further litigation due to the act of the workman. Multiplicity of litigation, it was stated, was not the intention of law. The appellant had initiated the litigation and he misused the process of law.

The relationship of employer and employee between the Management (respondent No.1) and the appellant was denied. The Contractor (respondent No.2), it was submitted, was never made a party to any of the applications or the order of reference. The Contractor (respondent No.2) could be made a party to the reference under Section 18 of the I.D. Act. Besides, the appellant could make the contractors parties to the previous applications which he never did. Therefore, he was estopped from all actions directly or indirectly against the Management (respondent No.1). None of the contractors, i.e. Kundan Lal or Jyoti Fabricators were working for the last many years. The address of Kundan Lal is mentioned as Proprietor, New Jyoti Enterprises. It, however, could not be stated whether he was alive and was residing at his address.

In reply to the contention of the appellant that he has no other alternate remedy but to take shelter of Section 21 (4) of the Contract Labour (Regulation and Abolition) Act, 1970 ('1970 Act' - for short) wherein it is mentioned that in case the contractor fails to make payment of wages to its employees, then the principal

employer shall be liable to make payment of wages in full of the unpaid balance due; it was submitted that the same was totally misconceived and the appellant was liable to approach the High Court by way of a writ petition under Article 226 of the Constitution against the earlier order dated 17.11.1994 (Annexure P5). The principal employer was liable only to pay the dues when these were claimed during engagement of the contractor and a complaint was made regarding non-payment to the principal employer. The principal employer was not liable to pay anything on behalf of the Contractor (respondent No.2) or any of the employees of the contractor in any manner. Nothing was liable to be paid to the appellant by the Management (respondent No.1). M/s Kundan Lal Contractor was engaged for a specific job. The details of payments that were made were not admitted to be correct by the Management (respondent No.1). It was stated that the appellant or the parties claiming relief should make claim in one and the same application and if he omitted to do anything then he could not claim the same in the second and subsequent litigation. The workman (appellant) had full knowledge of the Contractor Kundan Lal, Proprietor of New Jyoti Enterprises and he should have made him as a party to application No.201 of 1993 (which was decided on 17.11.1994 - Annexure P5). Therefore, it was prayed that the application may be dismissed.

During proceedings before the learned Labour Court (respondent No.3), the appellant examined himself as WW1 (Annexure P3) on 22.01.2009. He stated that he joined on the post of Welder on 01.04.1990 with the Management (respondent No.1) on salary of Rs.1,605/- per month. The company kept him at the

company's register for two years and after that he was kept under a contractor, namely, Kundan Lal Soni. Earlier, he filed a case against the company. He then filed the case (i.e. the present case) against both. Less payment was made to him and six months' wages were not paid. His claim was for non-payment of six months' wages. He tendered in evidence, copy of the order Ex.W1 (i.e. the order dated 17.11.1994 Annexure P5). The application, it is stated, was rejected holding that he was a worker of the Contractor and should file a claim petition against him. His claim still was for payment of six months' wages from July 1992 to December 1992. The respondent, i.e. the Management, had removed him after filing the case. He had demanded his money from the Contractor (respondent No.2) after the order had been passed (i.e. the order dated 17.11.1994 Annexure P5) but he was told that his money was with the owner and because the case had been filed, the money had been taken by the owner. He did not know about the Contractor and also did not know where he was and he had run away. No compensation was paid to him by the contractor at the time of termination of his services. In cross-examination, he stated that he had no proof regarding his appointment in the company. It is stated as correct that in the previous application No.201/93, it was held that he was worker of the contractor and his claim was rejected. He had not filed any application against the order Ex.W1 (the order dated 17.11.1994 Annexure P5).

The Management (respondent No.1) examined Shri K.K. Srivastava, Personnel Officer. His statement Ex.P4 is on record. He stated that he had joined the company on 01.01.1991. They had helper, fitter, welder types of workmen. They kept a record of every

worker. The record of the workers of the contractor was kept by the contractor. When the contract is complete, the contractor takes his record. The deduction of ESI (Employees' State Insurance) and PF (Provident Fund) from the salary was made by the contractor and deposited in their 'Head'. He had brought the record of the company. The name of the applicant (appellant) was not there since 1989 till the date of his deposition, i.e. 17.12.2009. They had given identity card to the applicant (appellant) and other workers of the contractor because they were facing difficulty while coming and going during the night. The applicant (appellant) had filed a case in 1993 before the Conciliation Officer in which it was made clear before the Conciliation Officer that the applicant (appellant) was a workman of the Contractor and would remain with him. Earlier, the workman had filed a case of this type and now again he had raised the same type of demand. Nothing was due against the respondent, i.e. the Management (respondent No.1). The applicant (appellant) was not their workman but was a worker of the contractor. He was cross-examined on behalf of the appellant. It was stated by Shri Srivastava that the registers which he had brought with him for deposing did not mention the name of the applicant (appellant) as a workman with their company. He mentioned the number of other workers who were working during 1991-92 and then in the month of April 1993.

The learned Presiding Officer, Labour Court framed the following issues:-

1. Whether there was any relationship of employee and employer between the respondent and applicant? OPA

2. Whether the workman is entitled for the claimed amount? If so to what relief? OPA

3. Relief.

The learned Labour Court (respondent No.3) disposed of the application under Section 33 C (2) of the I.D. Act vide order dated 13.05.2010 (Annexure P6). It was observed that the Tribunal at Faridabad had vide order dated 17.11.1994 (Annexure P5) held that the workman was an employee of the contractor. It was specifically mentioned that in case the workman claims his wages, then he should file a petition against the Contractor. There was no evidence on record to show that the workman ever filed any petition against the Contractor to claim wages. A bald statement that the workman had fled away, it was said, was not sufficient to show that the workman ever took effective steps to recover the wages from the Contractor. No document had been placed on record regarding any compliance being made in accordance with the order Ex.W1 (Annexure P5).

In the said circumstances, it was held that the workman could not be allowed to re-agitate the matter against the company, i.e. the Management (respondent No.1). The provisions of Section 21 (4) of the 1970 Act, it was held, were not attracted. The petition was held to be barred by the principle of *res judicata*. The workman had already been proved to be an employee of the contractor and not under the Management (respondent No.1). He had not filed any petition as per directions of the Tribunal vide order dated 17.11.1994 Ex.W1 (Annexure P5). Both the issues were decided in favour of the Management (respondent No.1) and against the workman (appellant).

The application under Section 33 C (2) of the I.D. Act was dismissed.

The appellant aggrieved against the order dated 13.05.2010 (Annexure P6) passed by the learned Labour Court-II, Faridabad (respondent No.3) filed a petition in this Court under Article 226 of the Constitution.

The Contractor (respondent No.2) was not served in the petition under Article 226 of the Constitution before the learned Single Judge. The Management (respondent No.1), however, appeared and filed its written statement. According to the Management (respondent No.1), the appellant was not their employee but was an employee of the Contractor (respondent No.2). It was submitted that the claim petition under Section 33 C (2) of the I.D. Act was not maintainable against it; besides, there was no material on record to prove the ingredients of sub-section (4) of Section 21 of the 1970 Act. The petitioner (now appellant), it was stated, was knowingly not giving the correct address of the Contractor (respondent No.2).

The learned Single Judge noticed the pleadings and material on record. It was observed that it was apparent from a perusal of the file that the Contractor was never served. Even in the statement (Annexure P3) of the petitioner (now appellant), it had come that he did not know who Kundan Lal Soni was and where was his firm. The learned Labour Court accordingly held that the workman had not taken any effective steps to recover the wages from the contractor and he could not be allowed to re-agitate the matter with the Company, i.e. the Management (respondent No.1), on the ground that the 1970 Act was attracted. The petition was held to be barred by the principles of *res judicata* since the workman had already been

proved to be a worker of the Contractor and not under the Management. It was submitted on behalf of the appellant that in terms of the 1970 Act, the principal employer would be responsible for the wages in case the contractor did not pay. The learned Single Judge did not agree with the said submission. It was noticed that the order dated 13.05.2010 (sic. - 17.11.1994 Annexure P5) was passed *inter se* the parties and it was found that the petitioner (now appellant) was a workman of the Contractor. No effort had been made by him to challenge the said order at that point of time before the High Court. The litigation had finalized *inter se* the parties with the Management (respondent No.1). Therefore, second round of litigation again initiated would apparently be barred by the principles of *res judicata* as had been held by the learned Labour Court.

It was also observed that it was apparent from the record that the petitioner (now appellant) had not made efforts to serve the Contractor (respondent No.2) before the learned Labour Court. Even before this Court also, several opportunities were granted since notice of motion was issued on 30.03.2011. Even 'dasti' process had been taken despite that M/s New Jyoti Fabricators through its Proprietor Kundan Lal Soni, Contractor (respondent No.2) had not been served. Therefore, the petitioner (now appellant) could have no grouse against the Management (respondent No.1), as such, for the alleged dues once the proceedings *inter se* the parties had become final in the earlier round of litigation.

Learned counsel for the appellant submits that the dispute in the case relates to wages of the appellant for the period from July 1992 to December 1992, which is the amount due and payable to him

and the same is liable to be paid by the Management (respondent No.1), who was the principal employer of the appellant in terms of Section 21 (4) of the 1970 Act.

After giving our thoughtful consideration to the facts and circumstances of the case, it is to be noticed that the appellant initially filed an application No.201 of 1993 under Section 33 C (2) of the I.D. Act, which was against the Management (respondent No.1) only, claiming a sum of Rs.9,630/- from it. In the said application, the Contractor (respondent No.2) was not impleaded as a party. The application was dismissed by the learned Presiding Officer, Labour Court-II, Faridabad on 17.11.1994 (Annexure P5). In the said order, it was noticed that the ESI contribution was to be made by the contractor and so the employees of the contractor were issued ESI cards. A reference was made to the ESI returns Ex.M1 to Ex.M4 filed by the contractor which related to the period from 01.04.1992 to 30.09.1992 (Ex.M3) and for the period from 01.10.1992 to 31.03.1993. The name of the claimant (appellant) was mentioned in these returns. Besides, his name also found a mention in the list of employees of the contractor attached with the settlement Ex.M5. The signatures of Ram Bhajan Yadav, who marked the attendance card Ex.W4 to Ex.W9 of the appellant, were also at the end of the settlement Ex.M5 as an authorized representative of the contractor. It was held that all these facts clubbed together clearly established that the claimant (appellant) was employed with the contractor during the period from July 1992 to December 1992 and, as such, he was not entitled to claim the salary for this period from the Management (respondent No.1). In the result, it was held that the claimant

(appellant) was not entitled to claim the amount of Rs.9,630/- from the Management (respondent No.1). The application was accordingly dismissed.

The appellant then filed an application No.106 of 2004, which is now the subject matter of consideration. In the said application, he impleaded M/s Rachitech Engg. Pvt. (respondent No.1) and also M/s New Joyti Fabricator i.e. the Contractor (respondent No.2). However, the Contractor (respondent No.2) was not served. The Management (respondent No.1), in its written statement, pleaded that the earlier application under Section 33 C (2) of the I.D. Act was dismissed. It is further stated that it was made clear that the workman (appellant) was an employee of the Contractor (respondent No.2) and he never worked under the Management (respondent No.1). In the earlier application, the contractor was not made a party.

In para 3 of the order dated 13.05.2010 (Annexure P6), it is mentioned that in fact the contractor (Kundan Lal) was a Proprietor of M/s New Joyti Fabricators. He was a resident of House No.419, Jawahar Colony, Faridabad. The workman (appellant) was an employee under him and he had not made him as a party to the petition. Despite the fact that the Management (respondent No.1) had given the name of the contractor as also his address, the appellant took no steps whatsoever to serve respondent No.2 in the said proceedings. The learned Presiding Officer, Labour Court-II, Faridabad vide its award dated 13.05.2010 (Annexure P6) found the second application No.106/04 of the appellant under Section 33 C (2) of the I.D. Act to be without any merit and accordingly dismissed the same.

It was held that the workman (appellant) could not be allowed to re-agitate the matter against the Company. The provisions of Section 21 (4) of the 1970 Act were not attracted.

It is to be noticed that in the order of the learned Labour Court (respondent No.3) passed on 13.05.2010 (Annexure P6), the address of the Contractor (respondent No.2) had been mentioned as House No.419, Jawahar Colony, Faridabad. However, the appellant did not mention the said address either in the petition (Annexure P1) filed by him before the learned Labour Court. He did not mention the said address in the writ petition filed before the learned Single Judge and neither has he mentioned the same in the present appeal filed by him. Rather he has mentioned the address of the Contractor (respondent No.2) to be the same as that of the Management (respondent No.1). Besides, the appellant in his statement (Annexure P3) before the learned Labour Court while appearing as WW1 *inter alia* stated that he demanded his money from the Contractor after passing of the order, i.e. the order dated 17.11.1994 (Annexure P5), and he told him that his money was with the owner and because of filing of the case, the money had been taken by the owner.

The said statement evidently shows that the appellant had met the Contractor after passing of the order dated 17.11.1994 (Annexure P5). The appellant further states that he did not know anything about the Contractor and also did not know where he was and had run away. Be that as it may, it is not in dispute that the appellant had got in touch with the Contractor after the earlier order was passed by the learned Labour Court. Therefore, it is not understandable as to why he has not taken effective steps to initially

implead the Contractor (respondent No.2) in the earlier application No.201 of 1993, which has been disposed of on 17.11.1994 (Annexure P5) and then has not taken effective steps to serve him in the present proceedings and that too after the address had been disclosed to him. The possibility of his having received the amount from the Contractor (respondent No.2) cannot be ruled out and after receiving the amount, he may be again raising the same claim to get money from the Management (respondent No.1). Otherwise, there was no reason for him not to serve the Contractor (respondent No.2) before the learned Labour Court and also in the writ petition before the learned Single Judge.

Section 21 of the 1970 Act indeed provides the responsibility for payment of wages. Sub-section (4) thereof envisages that in case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under contract or as a debt payable by the contractor.

The present petition, however, has been held to be barred by the principle of *res judicata*. The fact that the workman (appellant) was an employee of the Contractor (respondent No.2) and not under the Management (respondent No.1) was established in the earlier petition that was decided on 17.11.1994 (Annexure P5). In the order dated 13.05.2010 (Annexure P6) passed by the learned Labour Court, which is now impugned, it was also observed that the appellant had

not filed any petition as per directions of the Tribunal vide order dated 17.11.1994 (Annexure P5).

In Satyadhyan Ghosal and others v. Smt. Deorajin Debi and another, AIR 1960 S.C. 941, it was held that the principle of *res judicata* is based on the need of giving a finality to a judicial decision. What it says is that once a *res* is *judicata*, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter – whether on a question of fact or a question of law – has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher Court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of *res judicata*, it was said, is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, it was said, that the principle of *res judicata* has been applied by the Courts for the purpose of achieving the finality in litigation. The result of this is that the original Court as well as any higher Court must in any future litigation proceed on the basis that the previous decision was correct.

In the circumstances, the contention of the learned counsel for the appellant that under the provisions of the 1970 Act, the principal employer would be responsible for the wages in case the contractor did not pay, is devoid of any merit in view of the earlier order dated 17.11.1994 (Annexure P5), which has attained finality and the Management (respondent No.1) has been held not liable to pay the amount due, if any, to the appellant. The learned Single

Judge also disagreed with the submissions made by learned counsel for the appellant in this regard. It was observed that admittedly the order dated 13.05.2010 (sic. 17.11.1994 Annexure P5) was passed *inter se* the parties and it was found that the petitioner (appellant) was a workman of the Contractor. No effort was made to challenge the said order at that point of time before this Court on the ground that the provisions of Section 21 (4) of the 1970 Act would be applicable. The litigation was finalized *inter se* the parties with the Management (respondent No.1). Therefore, it was held that the second round of litigation again initiated would be apparently barred by the principles of *res judicata* as held by the learned Labour Court. It was also held that it was apparent from the record that the petitioner (appellant) has not made any effort to serve the contractor. Even before this Court also, several opportunities were granted since notice of motion was issued on 30.03.2011, even 'dasti' process has been taken, despite that respondent No.2 had not been served. Therefore, the petitioner (appellant), it was observed, could have no grouse against the Management (respondent No.1), as such, for the alleged dues, once the proceedings *inter se* the parties had become final in the earlier round of litigation.

In the present appeal as well, notice of motion was issued by this Court on 19.01.2015 for 20.04.2015. On 20.04.2015, Mr. Tapan Kumar Yadav, Advocate had put in appearance for respondent No.1. None appeared for the learned Labour Court (respondent No.3) even though served. It was proceeded against *ex parte*. The Contractor (respondent No.2) remains unserved with the report that he is reported to have died. Learned counsel for the appellant prayed

for time to implead the legal representatives of Shri Kundan Lal Soni, Proprietor/Contractor.

Learned counsel for the appellant submits that he has not been able to ascertain the names of the legal representatives of Shri Kundan Lal Soni, Proprietor/Contractor.

The present litigation has been pending since 1993 in which the appellant initially claimed a sum of Rs.9,630/-. Thereafter, in the second application (Annexure P1), he made a claim for Rs.22,855/-. This was not made in the first application. Besides, several opportunities were granted to him and even the name and the address of the Contractor was informed to him but he took no steps to serve him. Despite 'dasti' notice being given, as observed by the learned Single Judge, respondent No.2 had not been served. Now he is reported to have died. Despite the address being given in the written statement, he did not implead the legal representatives of the contractor. No liability is made out against the Management (respondent No.1). Therefore, it would be in the fitness of things to put a quietus to the matter at this stage by dismissing the letters patent appeal.

Accordingly, the present appeal is dismissed.

(S.S. Saron)
Judge

(Ramendra Jain)
Judge

15.07.2015
A.Kaundal